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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 MARTIN SATERSTAD, et al.,

8 Plaintiff(s),

9 v.

10 THE STATE OF NEVADA, et al.,

11 Defendant(s).

Case No. 2:16-CV-1702 JCM (GWF)

ORDER

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13 Presently before the court is defendants' motion to dismiss.<sup>1</sup> (ECF No. 17). Plaintiffs  
14 Martin and Richard Saterstad ("plaintiffs") filed a response (ECF No. 20), to which defendants  
15 replied (ECF No. 21).

16 Also before the court is defendants' motion to stay case. (ECF No. 22). Plaintiffs have  
17 not filed a response, and the time to do so has passed.

18 Lastly before the court is plaintiff Richard Saterstad's "motion to extend time re 4(m)  
19 dismissal." (ECF No. 24). Defendants have not filed a response, and the time to do so has passed.

20 Plaintiffs initiated this civil rights action on July 18, 2016. (ECF No. 1). On April 2, 2018,  
21 the court adopted Magistrate Judge Foley's report and recommendation (ECF No. 12) and ordered  
22 that the clerk of court file plaintiffs' second amended complaint (ECF No. 10). (ECF No. 14 at 2).  
23 On April 18, 2018, plaintiffs filed a notice of summons returned executed as to nineteen (19) of  
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28 <sup>1</sup> Defendants are thirty-four (34) police officers with the Las Vegas Metropolitan Police  
Department ("LVMPD"). *See* (ECF No. 10).

1 the thirty-four (34) named defendants.<sup>2</sup> (ECF No. 15). As a result, plaintiffs' second amended  
2 complaint (ECF No. 10) became the legally operative complaint in this case.

3 On April 30, 2018, defendants filed the instant motion to dismiss pursuant to Rule 12(b)(6).  
4 (ECF No. 17). However, it is evident from the substance of defendants' motion that defendants  
5 have misguidedly moved to dismiss plaintiffs' original complaint (ECF No. 1) rather than the  
6 legally operative second amended complaint. *See* (ECF No. 17). Defendants' motion to dismiss  
7 references "counts," line numbers (*e.g.*, "lines 101–102"), and legal arguments that exist only  
8 within plaintiffs' original complaint. *See* (ECF No. 17 at 2, 6, 11); *see also* (ECF Nos. 1, 10).

9 Because defendants' motion makes arguments in favor of dismissing a complaint in this  
10 action that is no longer legally operative, the court will deny defendants' motion to dismiss (ECF  
11 No. 17) without prejudice. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012) ("an  
12 amended complaint [supersedes] the original complaint and renders it without legal effect").  
13 Additionally, defendants' motion to stay case pending resolution of the instant motion to dismiss  
14 is denied as moot. (ECF No. 22). Lastly, plaintiff Richard Saterstad's "motion to extend time re  
15 4(m) dismissal" is also denied as moot, as the court terminated the 4(m) proof of service deadline  
16 on May 7, 2018. *See* Docket.

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendants' motion to  
19 dismiss (ECF No. 17) be, and the same hereby is, DENIED without prejudice.

20 IT IS FURTHER ORDERED that defendants' motion to stay case (ECF No. 22) be, and  
21 the same hereby is, DENIED as moot.

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28 <sup>2</sup> Summons were returned unexecuted as to defendants G. Baker, L. Crane, S. Edwards, R. Flynn, B. Goddard, L. Hanna, R. Hood, J. Kisner, L. Lane, C. Maczala, S. Naegele, L. Roberts, R. Rogers, W. Valleck, and J. Van Epps. (ECF No. 16).

1 IT IS FURTHER ORDERED that plaintiff Richard Saterstad's "motion to extend time re  
2 4(m) dismissal" (ECF No. 24) be, and the same hereby, is DENIED as moot.

3 DATED December 10, 2018.

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5 UNITED STATES DISTRICT JUDGE  
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